

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Wannisky

26396

FILE: B-211578

DATE: September 29, 1983

MATTER OF: Jimmie Muscatello's Military and
Civilian Tailors

DIGEST:

1. IFB requirement for bidders to submit with their bids a fabric sample and written certification of sample from manufacturer or fabric mill involves issue of responsibility, not responsiveness, since it concerns how bidders will perform rather than whether bidders would perform in conformity with the solicitation.
2. Where protester alleges that bid was nonresponsive since certain information provided on bid form was inaccurate but agency determines that response submitted was accurate, protester has failed to meet its burden of affirmatively proving its allegation.

Jimmie Muscatello's Military and Civilian Tailors (Jimmie) protests the proposed award of a contract by the United States Secret Service to Suburban Uniform Company (Suburban) under invitation for bids (IFB) No. USSS83-B-28. The solicitation was issued for the procurement of men's and women's uniform shirts.

The protester alleges that Suburban was nonresponsive to the solicitation because it did not provide adequate certification of the fabric sample and because it inaccurately responded to the contingent fee clause in the solicitation.

The protest is denied.

The solicitation required that all bidders submit with their bids a cloth sample described in the specifications and a written certification that the fabric sample is that fabric specified in the IFB. The written certification was to be provided by the fabric mill or the shirt manufacturer.

026809

The protester alleges that Suburban was nonresponsive to the solicitation because, although its bid stated that the manufacturer of the shirts would be the Mt. Pleasant Shirt Manufacturing Company (Mt. Pleasant), the fabric sample and written certification regarding the fabric were submitted by the Horace Small Manufacturing Company (Horace Small), which is not a fabric mill and not the designated shirt manufacturer.

We do not agree with the protester that the inconsistency between the bid and the certification raises an issue of responsiveness. We have held that a requirement that a bidder submit a sample as evidence of its ability to produce merchandise in conformance with contract specifications relates to that bidder's responsibility, not responsiveness. See Mark II, Inc., B-203694, February 8, 1982, 82-1 CPD 104. We believe that rationale applies here. "Responsiveness" concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation; "responsibility" refers to the bidder's apparent ability and capacity to perform all the contract requirements. See Skyline Credit Corporation, B-209193, March 15, 1983, 83-1 CPD 257. The agency required the submission of the fabric sample and the certification to determine whether the bidders were qualified to produce the uniform shirts according to specifications and not to determine whether bidders promised to perform the contract in accordance with the solicitation. See Zarn, Inc., B-204702, July 29, 1982, 82-2 CPD 93.

Since the information required by the solicitation related to responsibility, there is no requirement that the information had to be submitted with the bid. See Watch Security, Inc., B-209149, October 20, 1982, 82-2 CPD 353. This is so regardless of solicitation language requiring submission of the fabric sample and certification with the bid, because a contracting agency cannot make a matter of responsibility into one of responsiveness by the terms of the solicitation. See Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167.

After bid opening, the contracting officer sought additional information regarding the inconsistency in the firms named in the bid and certification. Suburban stated

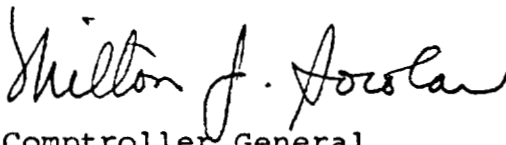
that Mt. Pleasant was a wholly owned subsidiary of Horace Small and that any certification would have had to come from Horace Small since Mt. Pleasant had no capacity to respond to the request independently. Horace Small also submitted information describing the connection between the two companies. The agency determined that the certification submitted with Suburban's bid was properly submitted and, in effect, found Suburban to be a responsible bidder.

As a second basis for protest, the protester alleges that Suburban was nonresponsive because it inaccurately completed paragraph 4, page 2, of Standard Form 33 (Solicitation, Offer and Award). The paragraph requires the bidder to state whether it has employed any company or person and whether it has paid any company or person contingent upon receiving award of the contract. Suburban indicated it had not employed or paid anyone in this regard.

The protester contends that this form was falsely completed by Suburban because employees of Horace Small answered questions of the contracting officer regarding Suburban's bid on several occasions. The contracting officer has found no evidence that these employees were in any way affiliated with Suburban; they were contacted for the sole purpose of clarifying the relationship between Mt. Pleasant and Horace Small. Accordingly, the agency has determined that Suburban's response was appropriate.

Under these circumstances, we need not determine whether the failure of a bidder to properly fill out paragraph 4 would render the bid nonresponsive since the protester has failed to meet its burden of proof that the form was filled out improperly. See Canyon Logging Company, B-209429, April 1, 1983, 83-1 CPD 343.

The protest is denied.

for 
Comptroller General
of the United States